National Labor Relations Board



Weekly Summary of NLRB Cases

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C A S E S S U M M A R I Z E D VISIT <u>WWW.NLRB.GOV</u> FULL TEXT			
Ohio and Vicinity Carpenters (The So		Dayton OH	1
South Mountain H Rehabilitation Cen		Vauxhall, NJ	1
OTHER CONTENTS			
No Answer to Complaint Case			2
 List of Unpublished Board Decisions and Orders in Representation Cases Uncontested Reports of Regional Directors and Hearing Officers Requests for Review of Regional Directors' Decisions and Directions of Elections and Decisions and Orders 			
Press Releases -	,	NLRB Web Site Automates Answers to Online Richard Miserendino Named NLRB Associate	

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Ohio and Vicinity Regional Council of Carpenters (The Schaefer Group, Inc.) (9-CB-10964; 344 NLRB No. 37) Dayton, OH March 14, 2005. The administrative law judge found that the Respondent violated Section 8(b)(1)(A) of the Act by failing to obtain the Employer's compliance with an arbitrator's award, thus allowing Charging Party Sidney J. Tompkins' right to enforcement of the award to lapse. The Board, however, reversed the judge's finding and dismissed the complaint without reaching the merits of the unfair labor practice allegation. [HTML] [PDF]

The Respondent contended that the complaint is time-barred under Section 10(b) of the Act. The Board held that the Respondent raised a valid affirmative defense by showing that the Charging Party had clear and unequivocal notice before the 6-month limitations period that the Respondent would not seek to enforce the Charging Party's arbitration award.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Sidney J. Tompkins, an Individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Cincinnati, March 23-24, 2004. Adm. Law Judge William N. Cates issued his decision April 21, 2004.

South Mountain Healthcare and Rehabilitation Center (22-RC-12461; 344 NLRB No. 40) Vauxhall, NJ March 18, 2005. The Board granted the Petitioner's (District 6, Service, Transport, and Health Employees) request for review and reversed the Regional Director's Supplemental Decision and Order finding that the Memorandum of Agreement (MOA) executed by the Intervenor (PACE Local 1-300) and the Employer contained a clear effective date of March 5, 2004 and that the MOA constituted a bar to the election petition. [HTML] [PDF]

The Petitioner is seeking to represent the same unit of nurses aides, dietary staff, housekeeping and laundry employees covered by the MOA between the Employer and the Intervenor. The MOA is a 3-page document and is dated "March 5, 2004" on the upper left-hand corner of its cover page. Its stated duration is "[f]our (4) year[s]."

In making its determination that the MOA did not serve as a bar to the petition, the Board found that the contract does not set forth an ascertainable effective date or expiration date sufficient to impart stability to the bargaining relationship because third parties cannot discern the appropriate time for filing a representation petition given the conflict among the various effective dates. It wrote:

To serve as a bar to a petition, a contract must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship. *Cind-R-Lite*, 239 NLRB 1255, 1256 (1979) Both an effective date and an expiration date are material terms of a contract. Id. Unless these dates are apparent from the face of the contract, without resort to parol evidence, the contract will not serve as a bar. Id. The terms of the agreement must be clear

from its face so that employees and outside unions may look to it to determine the appropriate time to file a representation petition. Cooper *Tire & Rubber Co.*, 181 NLRB 509 (1970).

The Board reinstated the petition and remanded the proceeding to the Regional Director for further appropriate action.

(Chairman Battista and Members Liebman and Schaumber participated.)

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Mary Cannon t/a Enviro-Tech (Laborers Local 332) (4-CA-33360, 344 NLRB No. 38) Philadelphia, PA March 16, 2005. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND DIRECTION [that Regional Director open and count ballots]

Huron Cement Products Co., Inc., Huron, OH, 8-RC-16672, March 14, 2005
(Chairman Battista and Members Liebman and Schaumber)
Stevens Van Lines, Inc., Sylvania, OH, 8-RD-2002, March 15, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

30 Main Construction Co., Inc., Brooklyn, NY, 29-RC-10321, March 16, 2005 (Chairman Battista and Members Liebman and Schaumber)

Barton Protective Services, LLC, Milwaukee, WI, 30-RC-6599, March 16, 2005 (Chairman Battista and Members Liebman and Schaumber)

Grange Debris Box & Wrecking Company, Inc., 20-RC-17987, San Rafael, CA, March 16, 2005 (Chairman Battista and Members Liebman and Schaumber)

Heartland Home Health Care and Hospice, Plymouth Meeting, PA, 22-RC-12498,

March 16, 2005 (Chairman Battista and Members Liebman and Schaumber)

V.L.P.S. Lighting Services, 22-RC-12557, Moonhachie, NJ, March 16, 2005 (Chairman Battista and Members Liebman and Schaumber)